



April 7, 2009

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## ENGROSSED SENATE BILL No. 209

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DIGEST OF SB 209 (Updated April 1, 2009 6:31 pm - DI 75)

**Citations Affected:** IC 3-5; IC 3-10; IC 3-11; IC 3-11.7; IC 3-14.

**Synopsis:** Absentee, provisional and return voting. Requires that election material related to provisional ballots (excluding the provisional ballots themselves) be made available for copying and inspection under the access to public records law in the same manner as other election material, except in the case of a recount or contest, when material related to provisional ballots remains confidential for six months after the completion of the recount or contest. Provides that information in material related to provisional ballots that identifies an individual, except for the individual's name, address, and birth date, remains confidential. Requires a precinct election officer, in the case of a voter who casts a provisional ballot, or an absentee voter board, in the case of a voter who casts an absentee ballot that is treated as a provisional ballot, to provide both orally and in writing an explanation of the steps the voter must take in order to have the voter's ballot counted. Requires the election commission to prescribe the form of the explanation. Requires the circuit court clerk of a county that conducts an election in which a voter casts a provisional ballot or an absentee ballot that is treated as a provisional ballot to notify the voter not later

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**Effective:** July 1, 2009.

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### Young R Michael, Lanane

(HOUSE SPONSORS — BATTLES, HINKLE)

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January 7, 2009, read first time and referred to Committee on Elections.  
February 9, 2009, amended, reported favorably — Do Pass.  
February 16, 2009, read second time, ordered engrossed.  
February 17, 2009, engrossed. Read third time, passed. Yeas 49, nays 0.

#### HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Elections and Apportionment.  
April 6, 2009, amended, reported — Do Pass.

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ES 209—LS 6915/DI 102+



than three days after election day concerning: (1) the reasons that the voter's ballot is being treated as a provisional ballot; (2) what actions, if any, that the voter must take in order to have the voter's ballot counted; (3) the deadline by which the voter must act to have the voter's ballot counted; and (4) certain contact information that the provisional voter may use to find out about the provisional voter's ballot. Requires that the notice be sent by first class United States mail or given by another method that the circuit court clerk determines will provide actual notice to the voter. Requires the notice to be in a form prescribed by the election commission. Requires the county election board to provide a list of the name and addresses of all voters who cast a provisional ballot at an election to a candidate whose name was on the ballot or the county chairman of a political party in the county not later than 72 hours after the request. Provides that a circuit court clerk who knowingly or intentionally fails to provide a provisional voter with the required notice commits a Class A misdemeanor. Requires the circuit court clerk and the secretary of state to compile and make public certain information about provisional voting. Provides that a member of the military or public safety officer may vote an absentee ballot by mail. Provides that a member of the military or public safety officer who has signed the poll list and is called from the polls before voting to respond to an emergency in the voter's capacity as a member of the military or public safety officer is entitled to return to the polls and vote upon execution of an affidavit.

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April 7, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 209

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A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-5-2-31.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 31.5. "Member of the military or public safety**  
4 **officer" has the meaning set forth in IC 10-14-2-5.**

5 SECTION 2. IC 3-10-1-31.1, AS AMENDED BY P.L.230-2005,  
6 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2009]: Sec. 31.1. (a) This section applies only to election  
8 materials for elections held after December 31, 2003.

9 (b) The inspector of each precinct shall deliver the bags required by  
10 section 30(a) and 30(c) of this chapter in good condition, together with  
11 poll lists, tally sheets, and other forms, to the circuit court clerk when  
12 making returns.

13 (c) Except for unused ballots disposed of under IC 3-11-3-31 or  
14 affidavits received by the county election board under IC 3-14-5-2 for  
15 delivery to the foreman of a grand jury, the circuit court clerk shall seal  
16 the ballots and other material during the time allowed to file a verified  
17 petition or cross-petition for a recount of votes or to contest the

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election. Except as provided in subsection (d) **and notwithstanding any other provision of state law**, after the recount or contest filing period, the election material, **including election material related to provisional ballots** (except for ballots **and provisional ballots**, which remain confidential) shall be made available for copying and inspection under IC 5-14-3. The circuit court clerk shall carefully preserve the sealed ballots and other material for twenty-two (22) months, as required by 42 U.S.C. 1974, after which the sealed ballots and other material are subject to IC 5-15-6 unless an order issued under:

(1) IC 3-12-6-19 or IC 3-12-11-16; or

(2) 42 U.S.C. 1973;

requires the continued preservation of the ballots or other material.

(d) If a petition for a recount or contest is filed, the **following apply:**

**(1) The** material for that election remains confidential until completion of the recount or contest.

**(2) Notwithstanding subdivision (1), material related to the provisional ballots cast in that election remains confidential for six (6) months after the completion of the recount or contest.**

(e) Upon delivery of the poll lists, the county voter registration office may unseal the envelopes containing the poll lists. For the purposes of:

(1) a cancellation of registration conducted under IC 3-7-43 through IC 3-7-46;

(2) a transfer of registration conducted under IC 3-7-39, IC 3-7-40, or IC 3-7-42;

(3) a change of name made under IC 3-7-41;

(4) adding the registration of a voter under IC 3-7-48-8; or

(5) recording that a voter subject to IC 3-7-33-4.5 submitted the documentation required under 42 U.S.C. 15483 and IC 3-11-8 or IC 3-11-10;

the county voter registration office may inspect the poll lists and update the registration record of the county. The county voter registration office shall use the poll lists to update the registration record to include the voter's voter identification number if the voter's voter identification number is not already included in the registration record. Upon completion of the inspection, the poll list shall be preserved with the ballots and other materials in the manner prescribed by subsection (c) for the period prescribed by subsections (c) and (d).

(f) This subsection does not apply to ballots, **including provisional ballots**. Notwithstanding subsection (c), if a county voter registration office determines that the inspection and copying of precinct election

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material would reveal the political parties, candidates, and public questions for which an individual cast an absentee ballot, the county voter registration office shall keep confidential only that part of the election material necessary to protect the secrecy of the voter's ballot. **In addition, the county voter registration office shall keep confidential information contained in material related to provisional ballots that identifies an individual, except for the individual's name, address, and birth date.**

(g) After the expiration of the period described in subsection (c) or (d), the ballots may be destroyed in the manner provided by IC 3-11-3-31 or transferred to a state educational institution as provided by IC 3-12-2-12.

SECTION 3. IC 3-11-3-11, AS AMENDED BY P.L.230-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. The county election board shall deliver the following to each inspector or the inspector's representative:

(1) The supplies provided for the inspector's precinct by the election division.

(2) The local sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.

(3) The local ballots printed under the direction of the county election board as follows:

(A) In those precincts where ballot card voting systems are to be used, the number of ballots at least equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.

(B) In those precincts where electronic voting systems are to be used, the number of ballots that will be required to be printed and furnished to the precincts for emergency purposes only.

(C) Provisional ballots in the number considered necessary by the county election board.

(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.

(5) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.

(6) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482 **and IC 3-11.7-2-2**. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).

SECTION 4. IC 3-11-8-25.2, AS AMENDED BY P.L.164-2006,

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SECTION 101, IS AMENDED TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2009]: Sec. 25.2. (a) The poll clerk or assistant  
 poll clerk shall examine the list provided under IC 3-7-29-1 to  
 determine if the county election board has indicated that the voter is  
 required to provide additional personal identification under 42 U.S.C.  
 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a  
 certification concerning absentee voters under IC 3-11-10-12) indicates  
 that the voter is required to present this identification before voting in  
 person, the poll clerk shall advise the voter that the voter must present,  
 in addition to the proof of identification required by section 25.1(a) of  
 this chapter, a piece of identification described in subsection (b) to the  
 poll clerk.

(b) As required by 42 U.S.C. 15483, and in addition to the proof of  
 identification required by section 25.1(a) of this chapter, a voter  
 described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5  
 before appearing at the polls on election day must present one (1) of the  
 following documents to the poll clerk:

(1) A current and valid photo identification.

(2) A current utility bill, bank statement, government check,  
 paycheck, or government document that shows the name and  
 address of the voter.

(c) If a voter presents a document under subsection (b), the poll  
 clerk shall add a notation to the list indicating the type of document  
 presented by the voter. The election division shall prescribe a  
 standardized coding system to classify documents presented under this  
 subsection for entry into the county voter registration system.

(d) If a voter required to present documentation under subsection (b)  
 is unable to present the documentation to the poll clerk while present  
 in the polls, the poll clerk shall notify the precinct election board. The  
 board shall provide a provisional ballot to the voter under IC 3-11.7-2.

(e) The precinct election board shall advise the voter, **both orally  
 and in writing**, that the voter may file a copy of the documentation  
 with the county voter registration office to permit the provisional ballot  
 to be counted under IC 3-11.7.

**(f) The circuit court clerk shall provide the notice required by  
 IC 3-11.7-6-4 to a voter who casts a provisional ballot under this  
 section.**

SECTION 5. IC 3-11-8-25.7 IS ADDED TO THE INDIANA CODE  
 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 2009]: **Sec. 25.7. (a) This section applies only to a voter who is a  
 member of the military or public safety officer.**

**(b) Notwithstanding section 25.5 of this chapter, a voter who**

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signs the voter's name and either:

(1) signs the voter's address; or

(2) checks the "Address Unchanged" box;

on the poll list under section 25.1 of this chapter and then leaves the polls without casting a ballot or after casting a provisional ballot may reenter the polls to cast a ballot at the election as provided in this section.

(c) A voter who leaves the polls to respond to an emergency in the voter's capacity as a member of the military or public safety officer must notify a precinct election officer that the voter is leaving the polls to respond to an emergency in the voter's capacity as a member of the military or public safety officer.

(d) A poll clerk or assistant poll clerk shall make a notation on the poll list with the voter's name indicating that the voter has left the polls as permitted by this section and the time the voter left the polls.

(e) If the voter returns to the polls, the voter shall be permitted to vote if the voter executes an affidavit stating all of the following:

(1) The name of the voter.

(2) That the voter is a member of the military or public safety officer.

(3) The military or public safety position the voter holds.

(4) That after the voter signed the poll list, but before the voter voted, the voter was called to respond to an emergency in the voter's capacity as a member of the military or public safety officer.

(5) A brief description of the emergency to which the voter responded.

(6) The time the voter returned to the polls.

(f) The commission shall prescribe the form of the affidavit required by this section.

SECTION 6. IC 3-11-10-24, AS AMENDED BY P.L.103-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

(1) The voter has a specific, reasonable expectation of being absent from the county on election day during the entire twelve (12) hours that the polls are open.

(2) The voter will be absent from the precinct of the voter's residence on election day because of service as:

(A) a precinct election officer under IC 3-6-6;

(B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;

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(C) a challenger or pollbook holder under IC 3-6-7; or

(D) a person employed by an election board to administer the election for which the absentee ballot is requested.

(3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire twelve (12) hours that the polls are open.

(4) The voter is a voter with disabilities.

(5) The voter is an elderly voter.

(6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire twelve (12) hours that the polls are open.

(7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(9) The voter is prevented from voting due to observance of a religious discipline or religious holiday during the entire twelve (12) hours that the polls are open.

(10) The voter is an address confidentiality program participant (as defined in IC 5-26.5-1-6).

**(11) The voter is a member of the military or public safety officer.**

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose.

The voter shall:

(1) deposit the sealed envelope in the United States mail for delivery to the county election board; or

(2) authorize a member of the voter's household or the individual designated as the voter's attorney in fact to:

(A) deposit the sealed envelope in the United States mail; or

(B) deliver the sealed envelope in person to the county election board.

(d) If a member of the voter's household or the voter's attorney in

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fact delivers the sealed envelope containing a voter's absentee ballot to the county election board, the individual delivering the ballot shall complete an affidavit in a form prescribed by the commission. The affidavit must contain the following information:

(1) The name and residence address of the voter whose absentee ballot is being delivered.

(2) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the individual delivering the absentee ballot.

(3) A statement indicating whether the individual delivering the absentee ballot is a member of the voter's household or is the attorney in fact for the voter. If the individual is the attorney in fact for the voter, the individual must attach a copy of the power of attorney for the voter, unless a copy of this document has already been filed with the county election board.

(4) The date and location at which the absentee ballot was delivered by the voter to the individual delivering the ballot to the county election board.

(5) A statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots.

(6) A statement that the individual delivering the absentee ballot is executing the affidavit under the penalties of perjury.

(7) A statement setting forth the penalties for perjury.

(e) The county election board shall record the date and time that the affidavit under subsection (d) was filed with the board.

(f) After a voter has mailed or delivered an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

(1) section 1.5 of this chapter; or

(2) section 33 of this chapter.

SECTION 7. IC 3-11-10-26, AS AMENDED BY P.L.164-2006, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) As an alternative to voting by mail, a voter is entitled to cast an absentee ballot before an absentee voter board:

(1) in the office of the circuit court clerk (or board of elections and registration in a county subject to IC 3-6-5.2); or

(2) at a satellite office established under section 26.3 of this chapter.

(b) The voter must:

(1) sign an application on the form prescribed by the commission under IC 3-11-4-5.1; and

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(2) provide proof of identification;  
before being permitted to vote. The application must be received by the  
circuit court clerk not later than the time prescribed by IC 3-11-4-3.

(c) The voter may vote before the board not more than twenty-nine  
(29) days nor later than noon on the day before election day.

(d) An absent uniformed services voter who is eligible to vote by  
absentee ballot in the circuit court clerk's office under IC 3-7-36-14  
may vote before the board not earlier than twenty-nine (29) days before  
the election and not later than noon on election day. If a voter described  
by this subsection wishes to cast an absentee ballot during the period  
beginning at noon on the day before election day and ending at noon on  
election day, the county election board or absentee voter board may  
receive and process the ballot at a location designated by resolution of  
the county election board.

(e) The absentee voter board in the office of the circuit court clerk  
must permit voters to cast absentee ballots under this section for at  
least seven (7) hours on each of the two (2) Saturdays preceding  
election day.

(f) Notwithstanding subsection (e), in a county with a population of  
less than twenty thousand (20,000), the absentee voter board in the  
office of the circuit court clerk, with the approval of the county election  
board, may reduce the number of hours available to cast absentee  
ballots under this section to a minimum of four (4) hours on each of the  
two (2) Saturdays preceding election day.

(g) As provided by 42 U.S.C. 15481, a voter casting an absentee  
ballot under this section must be:

(1) permitted to verify in a private and independent manner the  
votes selected by the voter before the ballot is cast and counted;

(2) provided with the opportunity to change the ballot or correct  
any error in a private and independent manner before the ballot is  
cast and counted, including the opportunity to receive a  
replacement ballot if the voter is otherwise unable to change or  
correct the ballot; and

(3) notified before the ballot is cast regarding the effect of casting  
multiple votes for the office and provided an opportunity to  
correct the ballot before the ballot is cast and counted.

(h) As provided by 42 U.S.C. 15481, when an absentee ballot is  
provided under this section, the board must also provide the voter with:

(1) information concerning the effect of casting multiple votes for  
an office; and

(2) instructions on how to correct the ballot before the ballot is  
cast and counted, including the issuance of replacement ballots.

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(i) If:

(1) the voter is unable or declines to present the proof of identification; or

(2) a member of the board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.5;

the voter shall be permitted to cast an absentee ballot and the voter's absentee ballot shall be treated as a provisional ballot.

**(j) This subsection applies to a voter who casts an absentee ballot that is treated as a provisional ballot under subsection (i). The board shall provide the voter, both orally and in writing, an explanation of what actions, if any, the voter must take in order to have the voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the voter.**

SECTION 8. IC 3-11.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A provisional voter shall do the following:

(1) Mark the ballot in the presence of no other person, unless the voter requests help in marking a ballot under IC 3-11-9.

(2) Fold each ballot separately.

(3) Fold each ballot so as to conceal the marking.

(4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the envelope provided by the county election board under IC 3-11.7-1-8.

(5) Securely seal the envelope.

(b) A provisional voter may mark a ballot with a pen or a lead pencil.

(c) This subsection applies to a provisional voter described in section 1(a)(1), 1(a)(2), or 1(a)(3) of this chapter. As provided by 42 U.S.C. 15482, a precinct election officer shall give the provisional voter a copy of the written instructions prescribed by the county election board under IC 3-11.7-6-3 after the voter returns the envelope containing the provisional voter's ballots.

**(d) This subsection applies to a provisional voter described in section 1(a) or 1(b) of this chapter. In addition to the written instructions required by subsection (c), a precinct election officer shall provide the provisional voter, both orally and in writing, an explanation of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted. The**

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1 **commission shall prescribe the form of the explanation required by**  
 2 **this subsection. The circuit court clerk shall also provide the notice**  
 3 **required by IC 3-11.7-6-4 to the provisional voter.**

4 SECTION 9. IC 3-11.7-6-3 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) As required by  
 6 42 U.S.C. 15482, a county election board shall establish a free access  
 7 system such as a toll-free telephone number or an Internet web site that  
 8 enables a provisional voter to determine:

- 9 (1) whether the individual's provisional ballot was counted; and  
 10 (2) if the provisional ballot was not counted, the reason the  
 11 provisional ballot was not counted.

12 (b) As required by 42 U.S.C. 15482, the county election board shall  
 13 establish and maintain reasonable procedures to protect the security,  
 14 confidentiality, and integrity of personal information collected, stored,  
 15 or otherwise used on the free access system established by the board  
 16 under subsection (a).

17 (c) As required by 42 U.S.C. 15482, the county election board shall  
 18 restrict access to the ~~information available~~ **free access system**  
 19 **established** under subsection (a) ~~about a provisional voter's ballot~~  
 20 ~~to the individual voter who cast the provisional ballot. This subsection~~  
 21 **does not restrict access to election materials available under**  
 22 **IC 3-10-1-31.1.**

23 (d) The county election board shall prescribe written instructions to  
 24 inform a provisional voter how the provisional voter can determine  
 25 whether the provisional voter's ballot has been counted.

26 (e) **Notwithstanding subsections (b) and (c), the county election**  
 27 **board shall provide to the following, upon request, a list of the**  
 28 **name and address of all voters who have cast a provisional ballot**  
 29 **in an election held in the county:**

- 30 (1) **A candidate whose name was on the ballot in the county at**  
 31 **the election.**  
 32 (2) **The county chairman of a political party of the county in**  
 33 **which the election was held.**

34 **The county election board shall provide a list requested under this**  
 35 **subsection not later than seventy-two (72) hours after the time the**  
 36 **list is requested.**

37 SECTION 10. IC 3-11.7-6-4 IS ADDED TO THE INDIANA CODE  
 38 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 39 1, 2009]: Sec. 4. (a) **This section applies to a county that conducts**  
 40 **an election in which a voter casts a provisional ballot.**

41 (b) **Not later than three (3) calendar days after election day, the**  
 42 **circuit court clerk shall provide a notice containing the following**

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information to each voter described in subsection (a):

(1) The reason or reasons that the voter's ballot is being treated as a provisional ballot.

(2) A description of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted under this article.

(3) The deadlines by which the provisional voter is required to take any actions described in subdivision (2) in order to have the provisional voter's ballot counted under this article.

(4) The following information that will enable the provisional voter to inquire about the provisional voter's ballot:

(A) The name of the office that the provisional voter may contact.

(B) The address of the office described in clause (A).

(C) The telephone number at the office described in clause (A) that the voter may use to contact the office about the voter's provisional ballot.

(D) Any other information the circuit court clerk considers useful to provide assistance to the provisional voter in inquiring about the provisional ballot.

(c) The notice required by subsection (b) must be:

(1) sent by first class United States mail; or

(2) given by another method the circuit court clerk determines will provide actual notice to the voter.

(d) The notice required by subsection (b) must be in a form prescribed by the commission.

(e) A circuit court clerk who knowingly or intentionally fails to provide the notice required by subsection (b) commits a Class A misdemeanor under IC 3-14-4-3(b).

SECTION 11. IC 3-11.7-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) Not later than thirty (30) days after an election, the circuit court clerk shall compile a report that includes the following information:

(1) The number of provisional ballots cast at the election in the county.

(2) The following information relating to the provisional ballots cast:

(A) A list of the reasons that provisional ballots were cast.

(B) For each reason listed, the number of provisional ballots cast for that reason.

(3) The number of provisional ballots counted for that

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election.

(4) The following information relating to the provisional ballots that were not counted:

(A) A list of reasons that provisional ballots were not counted.

(B) For each reason listed, the number of provisional ballots not counted for that reason.

(b) The circuit court clerk shall:

(1) make the report available for public inspection and copying under IC 5-14-3; and

(2) send a copy of the report to the secretary of state.

(c) The secretary of state shall compile the reports sent by the circuit court clerks under subsection (b). Not later than December 31 of each year, the secretary of state shall issue a statewide compilation of all the reports sent to the secretary of state under subsection (b). The statewide compilation must include the following information:

(1) All the information contained in the county reports, by county.

(2) Statewide totals for each item of information required to be contained in the county reports under subsection (a).

(d) The secretary of state shall make the statewide compilation available for public inspection and copying under IC 5-14-3.

(e) The secretary of state shall develop uniform descriptions of the following information required to be compiled under subsection (a):

(1) The reasons that a provisional ballot is cast.

(2) The reasons that a provisional ballot is not counted.

SECTION 12. IC 3-14-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) Except as provided in subsection (b), a precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Class D felony.

(b) A circuit court clerk who knowingly or intentionally fails to provide the notice required by IC 3-11.7-6-4(b) commits a Class A misdemeanor.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Elections, to which was referred Senate Bill No. 209, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 9, after "the" insert "**following apply:**

**(1) The**".

Page 2, between lines 10 and 11, begin a new line block indented and insert:

**"(2) Notwithstanding subdivision (1), material related to the provisional ballots cast in that election remains confidential for six (6) months after the completion of the recount or contest."**

Page 2, line 37, after "ballot." insert "**In addition, the county voter registration office shall keep confidential information contained in material related to provisional ballots that identifies an individual, except for the individual's name, address, and birth date."**

and when so amended that said bill do pass.

(Reference is to SB 209 as introduced.)

LANDSKE, Chairperson

Committee Vote: Yeas 11, Nays 0.

## COMMITTEE REPORT

Mr. Speaker: Your Committee on Elections and Apportionment, to which was referred Senate Bill 209, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

**"SECTION 1. IC 3-5-2-31.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 31.5. "Member of the military or public safety officer" has the meaning set forth in IC 10-14-2-5."**

Page 3, between lines 8 and 9, begin a new paragraph and insert:

**"SECTION 3. IC 3-11-3-11, AS AMENDED BY P.L.230-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. The county election board shall deliver the**

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following to each inspector or the inspector's representative:

- (1) The supplies provided for the inspector's precinct by the election division.
- (2) The local sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.
- (3) The local ballots printed under the direction of the county election board as follows:
  - (A) In those precincts where ballot card voting systems are to be used, the number of ballots at least equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.
  - (B) In those precincts where electronic voting systems are to be used, the number of ballots that will be required to be printed and furnished to the precincts for emergency purposes only.
  - (C) Provisional ballots in the number considered necessary by the county election board.
- (4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.
- (5) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.
- (6) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482 **and IC 3-11.7-2-2**. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).

SECTION 4. IC 3-11-8-25.2, AS AMENDED BY P.L.164-2006, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25.2. (a) The poll clerk or assistant poll clerk shall examine the list provided under IC 3-7-29-1 to determine if the county election board has indicated that the voter is required to provide additional personal identification under 42 U.S.C. 15483 and IC 3-7-33-4.5 before voting in person. If the list (or a certification concerning absentee voters under IC 3-11-10-12) indicates that the voter is required to present this identification before voting in person, the poll clerk shall advise the voter that the voter must present, in addition to the proof of identification required by section 25.1(a) of this chapter, a piece of identification described in subsection (b) to the poll clerk.

(b) As required by 42 U.S.C. 15483, and in addition to the proof of identification required by section 25.1(a) of this chapter, a voter described by IC 3-7-33-4.5 who has not complied with IC 3-7-33-4.5

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before appearing at the polls on election day must present one (1) of the following documents to the poll clerk:

- (1) A current and valid photo identification.
- (2) A current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.

(c) If a voter presents a document under subsection (b), the poll clerk shall add a notation to the list indicating the type of document presented by the voter. The election division shall prescribe a standardized coding system to classify documents presented under this subsection for entry into the county voter registration system.

(d) If a voter required to present documentation under subsection (b) is unable to present the documentation to the poll clerk while present in the polls, the poll clerk shall notify the precinct election board. The board shall provide a provisional ballot to the voter under IC 3-11.7-2.

(e) The precinct election board shall advise the voter, **both orally and in writing**, that the voter may file a copy of the documentation with the county voter registration office to permit the provisional ballot to be counted under IC 3-11.7.

**(f) The circuit court clerk shall provide the notice required by IC 3-11.7-6-4 to a voter who casts a provisional ballot under this section.**

SECTION 5. IC 3-11-8-25.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 25.7. (a) This section applies only to a voter who is a member of the military or public safety officer.**

**(b) Notwithstanding section 25.5 of this chapter, a voter who signs the voter's name and either:**

- (1) signs the voter's address; or**
- (2) checks the "Address Unchanged" box;**

**on the poll list under section 25.1 of this chapter and then leaves the polls without casting a ballot or after casting a provisional ballot may reenter the polls to cast a ballot at the election as provided in this section.**

**(c) A voter who leaves the polls to respond to an emergency in the voter's capacity as a member of the military or public safety officer must notify a precinct election officer that the voter is leaving the polls to respond to an emergency in the voter's capacity as a member of the military or public safety officer.**

**(d) A poll clerk or assistant poll clerk shall make a notation on the poll list with the voter's name indicating that the voter has left the polls as permitted by this section and the time the voter left the**

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**polls.**

**(e) If the voter returns to the polls, the voter shall be permitted to vote if the voter executes an affidavit stating all of the following:**

- (1) The name of the voter.**
- (2) That the voter is a member of the military or public safety officer.**
- (3) The military or public safety position the voter holds.**
- (4) That after the voter signed the poll list, but before the voter voted, the voter was called to respond to an emergency in the voter's capacity as a member of the military or public safety officer.**
- (5) A brief description of the emergency to which the voter responded.**
- (6) The time the voter returned to the polls.**

**(f) The commission shall prescribe the form of the affidavit required by this section.**

SECTION 6. IC 3-11-10-24, AS AMENDED BY P.L.103-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

- (1) The voter has a specific, reasonable expectation of being absent from the county on election day during the entire twelve (12) hours that the polls are open.
- (2) The voter will be absent from the precinct of the voter's residence on election day because of service as:
  - (A) a precinct election officer under IC 3-6-6;
  - (B) a watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10;
  - (C) a challenger or pollbook holder under IC 3-6-7; or
  - (D) a person employed by an election board to administer the election for which the absentee ballot is requested.
- (3) The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury during the entire twelve (12) hours that the polls are open.
- (4) The voter is a voter with disabilities.
- (5) The voter is an elderly voter.
- (6) The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury during the entire twelve (12) hours that the polls are open.
- (7) The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

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(8) The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(9) The voter is prevented from voting due to observance of a religious discipline or religious holiday during the entire twelve (12) hours that the polls are open.

(10) The voter is an address confidentiality program participant (as defined in IC 5-26.5-1-6).

**(11) The voter is a member of the military or public safety officer.**

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) If a voter receives an absentee ballot by mail, the voter shall personally mark the ballot in secret and seal the marked ballot inside the envelope provided by the county election board for that purpose.

The voter shall:

(1) deposit the sealed envelope in the United States mail for delivery to the county election board; or

(2) authorize a member of the voter's household or the individual designated as the voter's attorney in fact to:

(A) deposit the sealed envelope in the United States mail; or

(B) deliver the sealed envelope in person to the county election board.

(d) If a member of the voter's household or the voter's attorney in fact delivers the sealed envelope containing a voter's absentee ballot to the county election board, the individual delivering the ballot shall complete an affidavit in a form prescribed by the commission. The affidavit must contain the following information:

(1) The name and residence address of the voter whose absentee ballot is being delivered.

(2) A statement of the full name, residence and mailing address, and daytime and evening telephone numbers (if any) of the individual delivering the absentee ballot.

(3) A statement indicating whether the individual delivering the absentee ballot is a member of the voter's household or is the attorney in fact for the voter. If the individual is the attorney in fact for the voter, the individual must attach a copy of the power of attorney for the voter, unless a copy of this document has already been filed with the county election board.

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(4) The date and location at which the absentee ballot was delivered by the voter to the individual delivering the ballot to the county election board.

(5) A statement that the individual delivering the absentee ballot has complied with Indiana laws governing absentee ballots.

(6) A statement that the individual delivering the absentee ballot is executing the affidavit under the penalties of perjury.

(7) A statement setting forth the penalties for perjury.

(e) The county election board shall record the date and time that the affidavit under subsection (d) was filed with the board.

(f) After a voter has mailed or delivered an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

(1) section 1.5 of this chapter; or

(2) section 33 of this chapter.

SECTION 7. IC 3-11-10-26, AS AMENDED BY P.L.164-2006, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. (a) As an alternative to voting by mail, a voter is entitled to cast an absentee ballot before an absentee voter board:

(1) in the office of the circuit court clerk (or board of elections and registration in a county subject to IC 3-6-5.2); or

(2) at a satellite office established under section 26.3 of this chapter.

(b) The voter must:

(1) sign an application on the form prescribed by the commission under IC 3-11-4-5.1; and

(2) provide proof of identification;

before being permitted to vote. The application must be received by the circuit court clerk not later than the time prescribed by IC 3-11-4-3.

(c) The voter may vote before the board not more than twenty-nine (29) days nor later than noon on the day before election day.

(d) An absent uniformed services voter who is eligible to vote by absentee ballot in the circuit court clerk's office under IC 3-7-36-14 may vote before the board not earlier than twenty-nine (29) days before the election and not later than noon on election day. If a voter described by this subsection wishes to cast an absentee ballot during the period beginning at noon on the day before election day and ending at noon on election day, the county election board or absentee voter board may receive and process the ballot at a location designated by resolution of the county election board.

(e) The absentee voter board in the office of the circuit court clerk

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must permit voters to cast absentee ballots under this section for at least seven (7) hours on each of the two (2) Saturdays preceding election day.

(f) Notwithstanding subsection (e), in a county with a population of less than twenty thousand (20,000), the absentee voter board in the office of the circuit court clerk, with the approval of the county election board, may reduce the number of hours available to cast absentee ballots under this section to a minimum of four (4) hours on each of the two (2) Saturdays preceding election day.

(g) As provided by 42 U.S.C. 15481, a voter casting an absentee ballot under this section must be:

- (1) permitted to verify in a private and independent manner the votes selected by the voter before the ballot is cast and counted;
- (2) provided with the opportunity to change the ballot or correct any error in a private and independent manner before the ballot is cast and counted, including the opportunity to receive a replacement ballot if the voter is otherwise unable to change or correct the ballot; and
- (3) notified before the ballot is cast regarding the effect of casting multiple votes for the office and provided an opportunity to correct the ballot before the ballot is cast and counted.

(h) As provided by 42 U.S.C. 15481, when an absentee ballot is provided under this section, the board must also provide the voter with:

- (1) information concerning the effect of casting multiple votes for an office; and
- (2) instructions on how to correct the ballot before the ballot is cast and counted, including the issuance of replacement ballots.

(i) If:

- (1) the voter is unable or declines to present the proof of identification; or
- (2) a member of the board determines that the proof of identification provided by the voter does not qualify as proof of identification under IC 3-5-2-40.5;

the voter shall be permitted to cast an absentee ballot and the voter's absentee ballot shall be treated as a provisional ballot.

**(j) This subsection applies to a voter who casts an absentee ballot that is treated as a provisional ballot under subsection (i). The board shall provide the voter, both orally and in writing, an explanation of what actions, if any, the voter must take in order to have the voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4**

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to the voter.

SECTION 8. IC 3-11.7-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A provisional voter shall do the following:

- (1) Mark the ballot in the presence of no other person, unless the voter requests help in marking a ballot under IC 3-11-9.
- (2) Fold each ballot separately.
- (3) Fold each ballot so as to conceal the marking.
- (4) Enclose each ballot, with the seal and signature of the circuit court clerk on the outside, together with any unused ballot, in the envelope provided by the county election board under IC 3-11.7-1-8.
- (5) Securely seal the envelope.

(b) A provisional voter may mark a ballot with a pen or a lead pencil.

(c) This subsection applies to a provisional voter described in section 1(a)(1), 1(a)(2), or 1(a)(3) of this chapter. As provided by 42 U.S.C. 15482, a precinct election officer shall give the provisional voter a copy of the written instructions prescribed by the county election board under IC 3-11.7-6-3 after the voter returns the envelope containing the provisional voter's ballots.

**(d) This subsection applies to a provisional voter described in section 1(a) or 1(b) of this chapter. In addition to the written instructions required by subsection (c), a precinct election officer shall provide the provisional voter, both orally and in writing, an explanation of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted. The commission shall prescribe the form of the explanation required by this subsection. The circuit court clerk shall also provide the notice required by IC 3-11.7-6-4 to the provisional voter."**

Page 3, after line 30, begin a new paragraph and insert:

**"(e) Notwithstanding subsections (b) and (c), the county election board shall provide to the following, upon request, a list of the name and address of all voters who have cast a provisional ballot in an election held in the county:**

- (1) A candidate whose name was on the ballot in the county at the election.**
- (2) The county chairman of a political party of the county in which the election was held.**

**The county election board shall provide a list requested under this subsection not later than seventy-two (72) hours after the time the list is requested.**

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SECTION 10. IC 3-11.7-6-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4. (a) This section applies to a county that conducts an election in which a voter casts a provisional ballot.**

**(b) Not later than three (3) calendar days after election day, the circuit court clerk shall provide a notice containing the following information to each voter described in subsection (a):**

**(1) The reason or reasons that the voter's ballot is being treated as a provisional ballot.**

**(2) A description of what actions, if any, the provisional voter must take in order to have the provisional voter's ballot counted under this article.**

**(3) The deadlines by which the provisional voter is required to take any actions described in subdivision (2) in order to have the provisional voter's ballot counted under this article.**

**(4) The following information that will enable the provisional voter to inquire about the provisional voter's ballot:**

**(A) The name of the office that the provisional voter may contact.**

**(B) The address of the office described in clause (A).**

**(C) The telephone number at the office described in clause (A) that the voter may use to contact the office about the voter's provisional ballot.**

**(D) Any other information the circuit court clerk considers useful to provide assistance to the provisional voter in inquiring about the provisional ballot.**

**(c) The notice required by subsection (b) must be:**

**(1) sent by first class United States mail; or**

**(2) given by another method the circuit court clerk determines will provide actual notice to the voter.**

**(d) The notice required by subsection (b) must be in a form prescribed by the commission.**

**(e) A circuit court clerk who knowingly or intentionally fails to provide the notice required by subsection (b) commits a Class A misdemeanor under IC 3-14-4-3(b).**

SECTION 11. IC 3-11.7-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 5. (a) Not later than thirty (30) days after an election, the circuit court clerk shall compile a report that includes the following information:**

**(1) The number of provisional ballots cast at the election in the county.**

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(2) The following information relating to the provisional ballots cast:

(A) A list of the reasons that provisional ballots were cast.

(B) For each reason listed, the number of provisional ballots cast for that reason.

(3) The number of provisional ballots counted for that election.

(4) The following information relating to the provisional ballots that were not counted:

(A) A list of reasons that provisional ballots were not counted.

(B) For each reason listed, the number of provisional ballots not counted for that reason.

(b) The circuit court clerk shall:

(1) make the report available for public inspection and copying under IC 5-14-3; and

(2) send a copy of the report to the secretary of state.

(c) The secretary of state shall compile the reports sent by the circuit court clerks under subsection (b). Not later than December 31 of each year, the secretary of state shall issue a statewide compilation of all the reports sent to the secretary of state under subsection (b). The statewide compilation must include the following information:

(1) All the information contained in the county reports, by county.

(2) Statewide totals for each item of information required to be contained in the county reports under subsection (a).

(d) The secretary of state shall make the statewide compilation available for public inspection and copying under IC 5-14-3.

(e) The secretary of state shall develop uniform descriptions of the following information required to be compiled under subsection (a):

(1) The reasons that a provisional ballot is cast.

(2) The reasons that a provisional ballot is not counted.

SECTION 12. IC 3-14-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Except as provided in subsection (b)**, a precinct election officer or public official upon whom a duty is imposed by this title who knowingly omits to perform the duty commits a Class D felony.

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**(b) A circuit court clerk who knowingly or intentionally fails to provide the notice required by IC 3-11.7-6-4(b) commits a Class A misdemeanor."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 209 as printed February 10, 2009.)

BATTLES, Chair

Committee Vote: yeas 6, nays 3.

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